

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

PREPARED FOOD PHOTOS, INC., f/k/a ADLIFE
MARKETING & COMMUNICATIONS CO., INC.,

Plaintiff,

v.

CLYDE'S CHICKEN KING, INC. d/b/a
CHICKEN KING,

Defendant.

No. 6:24-cv-00351-RRS-DGA

AFFIRMATION OF STACY DEVILLE BOUDREAUX

1. My name is Stacy Deville Boudreaux. I make this affirmation in support of defendant's motion for summary judgment.

2. My brother, John Clyde Deville, Jr., is the owner of defendant, which operates a two-location restaurant that was founded by our parents nearly fifty years ago. I help with management of the business, including our online advertising.

3. In 2015, the company hired AT&T to host and design a website for our business. I supplied AT&T with information about the business, and provided some photographs of our products taken with our own cameras. These photos included a photograph of chicken legs cooking on a grill.

4. I understand that plaintiff is claiming that we have infringed its copyright of a photograph of some pieces of breaded fried chicken sitting in a red and white checked paper basket. As explained below, that photo first appeared on our website when the website was first published. With the passage of time, I did not remember how that photograph came to be on our website, and

what the source of the photograph was.

5. However, I have since been advised by the company that designed the website under contract from AT&T that there was a license to use the photo.

6. By looking at the Internet Archive, I can see that as of March 9, 2016, the photo in question appeared on two different pages on our website—on the home page, <https://web.archive.org/web/20160309104430/http://chickenkingla.com/>, and on the “Products” page of the <https://web.archive.org/web/20160309104430/http://chickenkingla.com/Products>. In each location, it was one of three photos that rotated on and off the screen.

7. In 2019, Chicken King received a letter from Joel Albrizio, the President of AdLife Marketing & Communications Co., stating that its use of the photo infringed his company’s copyright and demanding that we pay \$16,000 to settle its claims for actual damages, costs and attorney fees. The letter itself was undated, but there were two other pages that each bore the date June 10, 2019. A second letter, label “2d Request,” arrived some time later, demanding payment of \$8,000. Copies of the letters and attachments are attached as Exhibit A

8. My immediate reaction to this letter was to be very afraid, so I immediately took steps to remove the photo from our website. But as I thought more, I also came to the conclusion that the letter looked like a scam, so from then on we ignored it.

9. I assumed at the time that I had successfully removed the photo from Chicken King’s website. I did not understand that I had taken the photo off the home page but not the “Products” page.

10. In 2021, we received a letter from R.M. Jones, Intellectual Property Director of Prepared Food Photos, Inc., saying that use of the photo infringed her company’s copyright and demanding

payment of \$8,000 to settle its claim for actual damages, costs and attorney fees. The letter was undated, but a page enclosed with the letter showed a date of March 8, 2021. A copy of the letter and enclosure is attached as Exhibit B. Mindful of the conclusion I had reached in 2019, that the 2019 demand was a scam, I took no further action.

11. In the last couple of years, AT&T stopped providing web hosting and web design services to our company; the business was transferred to a different company, Digital Space, which continues to host and maintain the website.

12. I believe I did receive a letter from the law firm CopyCat Legal as alleged in the complaint, but because I believed that I was being scammed, I did not keep the letter. After I received the lawsuit and saw a reference to the written demand from plaintiff, I asked plaintiff's lawyer to send me another copy of the letter, so that I could show it to my lawyer, but he has not responded.

13. I also received a call from the law firm following up on the letter. I told the caller that I believed I was being scammed, and asked to be taken off their list.

14. When I hired professionals to design and maintain Chicken King's website, I relied on them to use proper procedures in creating the site and to avoid violating any laws. I had no knowledge of copyright law and no desire to use any photo improperly. The reference on the website to Chicken King having a copyright is something AT&T added; so far as I can recall, AT&T never discussed that with me.

15. Since receiving the lawsuit in this case, I asked Digital Space whether it can tell me whether or not AT&T obtained a proper license for use of the photo. Because I have been advised that the use of the photo was licensed, I have decided not to remove it from the site for the time

being. If this case continues past the motion to dismiss stage, I understand that my lawyer could use discovery to compel disclosure of the actual licensing information.

Pursuant to 28 U.S.C. § 1746, I hereby affirm that the foregoing is true and correct. Executed on April 11, 2024.


Stacy Deville Boudreaux

Boudreaux Affirmation Exhibit A



IMPORTANT!

Adlife has conducted a routine audit of its licensed images. Having completed this audit, we have found significantly more usage than properly licensed.

Adlife does not have a record of your license on file and believes a license and/or copyright infringement may have been committed.

Should you or your company have proper licensing in place, please contact us directly. Should there be an appropriate license and you are able to substantiate it, please provide same to us.

If you do have a license we apologize for any inconvenience this may have caused.

**Adlife Marketing
& Communications Co., Inc.**

38 Church Street
Pawtucket, RI 02860

Dear Sir,

Adlife Marketing and Communications, Inc. (Adlife) is the owner of the copyrights and images of certain photographs which have been used by you or your agents or representatives without Adlife's permission or authorization.

At the present time, and for settlement purposes only, Adlife values the cost of this infringement at \$16,000.00.

Attached please find the image(s) that were used and the verification of the use of the image(s).

Pursuant to 17 USC chapter 1, section 101 the use of photographs and other pictorial images are protected from unlawful use or reproduction without the consent of the owner of those images.

Pursuant to 17 USC, section 504(b) and (c) a copyright owner may recover the actual damages incurred by it for wrongful and unpermitted use of its images. If the infringement was committed willfully, the courts have discretion to award up to \$150,000 per willful infringement.

Based on the fact that you knew or should have known that the images belonged to Adlife, and based on the fact they you used the images on multiple occasions without permission and due to the fact that the images were disseminated to a vast number of people for the purpose of profiting your business, Adlife can only conclude that the use of its images was willful and intentional.

Adlife is writing to you to resolve its claim for money damages without the necessity of the time and expense of a law suit. If, however, Adlife cannot immediately resolve the issue of the unlawful use of its images, it will be forced to file suit in the appropriate court and jurisdiction and seek the maximum damages permitted under the statute including costs and attorney fees.

Adlife would like to discuss this account with you knowing however that the sole purpose of any conversation with Adlife will be limited to why this is not a willful infraction and/or how the individual or company intends to pay this amount.

I urge you to contact me directly at joel@adlife.com. If Adlife does not hear from you within 10 days it will assume that you do not intend to resolve this matter amicably and it will take all necessary action without further notification.

Joel M. Albrizio
President
Adlife Marketing & Communications
joel@adlife.com
Direct line (617) 759-4504

Adlife Marketing & Communications Co., Inc.



Adlife Marketing & Communications Co., Inc.
38 Church St • Pawtucket, RI 02860
Phone: (401) 723-4782

Re: Claim Number: 4360271862213054899
FRE 408 SETTLEMENT COMMUNICATION

Monday, June 10, 2019

Company Name

Chicken King

Company Address

17560 Hwy. 190
Port Barre, LA 70577

Company Phone Number

337-585-7150

URL Containing Image

<http://chickenkingla.com/>



Image Name

ChickenFried013

Registration Number

VA0002017741





Adlife Marketing & Communications Co., Inc.
38 Church St • Pawtucket, RI 02860
Phone: (401) 723-4782

Re: Claim Number: 4360258252217089081
FRE 408 SETTLEMENT COMMUNICATION

Monday, June 10, 2019

Company Name

Chicken King

Company Address

17560 Hwy. 190
Port Barre, LA 70577

Company Phone Number

337-585-7150

URL Containing Image

<http://chickenkingla.com/products.html>



Image Name

ChickenFried013

Registration Number

VA0002017741



2nd Request



IMPORTANT!

Adlife has conducted a routine audit of its licensed images. Having completed this audit, we have found significantly more usage than properly licensed.

Adlife does not have a record of your license on file and believes a license and/or copyright infringement may have been committed.

Should you or your company have proper licensing in place, please contact us directly. Should there be an appropriate license and you are able to substantiate it, please provide same to us.

If you do have a license we apologize for any inconvenience this may have caused.

**Adlife Marketing
& Communications Co., Inc.**

38 Church Street
Pawtucket, RI 02860

Dear Sir,

Adlife Marketing and Communications, Inc. (Adlife) is the owner of the copyrights and images of certain photographs which have been used by you or your agents or representatives without Adlife's permission or authorization.

At the present time, and for settlement purposes only, Adlife values the cost of this infringement at \$8,000.00.

If you have a casualty insurance policy, please forward these documents to your insurance carrier, as these claims are often covered.

Attached please find the image(s) that were used and the verification of the use of the image(s).

Pursuant to 17 USC chapter 1, section 101 the use of photographs and other pictorial images are protected from unlawful use or reproduction without the consent of the owner of those images.

Pursuant to 17 USC, section 504(b) and (c) a copyright owner may recover the actual damages incurred by it for wrongful and unpermitted use of its images. If the infringement was committed willfully, the courts have discretion to award up to \$150,000 per willful infringement.

Based on the fact that you knew or should have known that the images belonged to Adlife, and based on the fact they you used the images on multiple occasions without permission and due to the fact that the images were disseminated to a vast number of people for the purpose of profiting your business, Adlife can only conclude that the use of its images was willful and intentional.

Adlife is writing to you to resolve its claim for money damages without the necessity of the time and expense of a law suit. If, however, Adlife cannot immediately resolve the issue of the unlawful use of its images, it will be forced to file suit in the appropriate court and jurisdiction and seek the maximum damages permitted under the statute including costs and attorney fees.

Adlife would like to discuss this account with you knowing however that the sole purpose of any conversation with Adlife will be limited to why this is not a willful infraction and/or how the individual or company intends to pay this amount.

I urge you to contact me directly at joel@adlife.com. If Adlife does not hear from you within 10 days it will assume that you do not intend to resolve this matter amicably and it will take all necessary action without further notification.

Joel M. Albrizio
President
Adlife Marketing & Communications
joel@adlife.com
Direct line (617) 759-4504

Adlife Marketing & Communications Co., Inc.



Adlife Marketing & Communications Co., Inc.
38 Church St • Pawtucket, RI 02860
Phone: (401) 723-4782

Re: Claim Number: 4360271862213054899
FRE 408 SETTLEMENT COMMUNICATION

Monday, June 10, 2019

Company Name

Chicken King

Company Address

17560 Hwy. 190
Port Barre, LA 70577

Company Phone Number

337-585-7150

URL Containing Image

<http://chickenkingla.com/>

**Image Name**

ChickenFried013

Registration Number

VA0002017741





Adlife Marketing & Communications Co., Inc.
38 Church St • Pawtucket, RI 02860
Phone: (401) 723-4782

Re: Claim Number: 4360258252217089081
FRE 408 SETTLEMENT COMMUNICATION

Monday, June 10, 2019

Company Name

Chicken King

Company Address

17560 Hwy. 190
Port Barre, LA 70577

Company Phone Number

337-585-7150

URL Containing Image

<http://chickenkingla.com/products.html>

**Image Name**

ChickenFried013

Registration Number

VA0002017741



Boudreaux Affirmation Exhibit B

The logo for PreparedFoodPhotos.com features a dark blue shield-like shape on the left with the text "PREPAREDFOODPHOTOS.COM" in white. To the right is a graphic of a crumpled, translucent material in shades of blue and white.

PREPAREDFOODPHOTOS.COM



Senior Management or Business Owner,

PreparedFoodPhotos.com (Prepared Food Photos) is the owner of the copyrights and images of certain photographs which have been used by you or your company without Prepared Food Photo's permission or authorization¹.

At the present time, and for settlement purposes only, Prepared Food Photos values the cost of this unauthorized use at \$8,000.00. This demand is privileged from disclosure pursuant to FRE 408.

If you have a casualty insurance policy, please forward these documents to your general liability insurance carrier as these claims are often covered.

Attached please find the image(s) that were used and the verification of the use of the image(s) via the enclosed Notice containing a screenshot from your company's website.

Pursuant to United States Code Title 17, Chapter 1, Section 101, and The Copyright Act, the use of photographs and other pictorial images are protected from unlawful use or reproduction without the consent of the owner of those images.

Pursuant to United States Code Title 17, Chapter 1, Section 504(b) and (c) a copyright owner may recover the actual damages incurred by it for the wrongful and unpermitted use of its images. If the infringement was committed willfully, the courts have discretion to award up to \$150,000 per willful infringement.

If Prepared Food Photos cannot immediately resolve the issue of the unlawful use of its images, it will be forced to file suit in the appropriate court and seek the maximum damages permitted under the statute including costs and attorney fees.

To summarize, your options for resolution are:

- Provide proof of proper licensing;
- In the absence of proper licensing, submit a claim to your insurance carrier;
- If there is no insurance coverage available, please present an amicable offer of resolution directly to Prepared Food Photos.

The sole purpose of any communication with Prepared Food Photos will be limited to why this is not a willful infringement and/or how the individual or company intends to pay this amount.

Please contact us directly at licensing@PreparedFoodPhotos.com. If Prepared Food Photos does not hear from you within 10 days, we will assume that you do not intend to resolve this matter amicably and we shall take all necessary action without further notification.

Sincerely,



R.M. Jones
Intellectual Property Director
licensing@PreparedFoodPhotos.com
(866) 609-1548

ⁱ Prepared Food Photos has conducted a routine audit of its licensed images. Having completed this audit, we have found significantly more usage than properly licensed. Prepared Food Photos does not have a record of your license on file and believes a license and/or copyright infringement may have been committed. Should you or your company have proper licensing in place, please contact us directly. Should there be an appropriate license and you are able to substantiate it, please provide proof of same to resolve this matter at once. If the image is properly licensed, we apologize for any inconvenience this may have caused.



PreparedFoodPhotos.com
P.O. Box 1000 • Slatersville, RI. 02876
licensing@PreparedFoodPhotos.com

Re: Claim Number: 4910252696837178338
FRE 408 SETTLEMENT COMMUNICATION

Monday, March 8, 2021

Company Name

Chicken King

Company Address

17560 Hwy. 190
Port Barre, LA 70577

Company Phone Number

337-585-7150

URL Containing Image

<http://chickenkingla.com/contact.html>



Image Name

ChickenFried013.

Registration Number

VA0002017741

Not Secure chickenkingla.com/contact.html

